

United States District Court
Eastern District of California

Richard Dennis Gamache,

Plaintiff,

vs.

Brett Williams, et al.,

Defendants.

No. Civ. S 04-0859 RRB PAN P

Order

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Plaintiff is a state prisoner prosecuting a civil rights
action without counsel.

In his December 14, 2004, amended complaint plaintiff names
as defendants B. Williams, Galloway, Milliman, Todd, D. Williams,
Goodnight, Wolfe, Smith and Friend. Plaintiff claims defendants
violated plaintiff's constitutional violations in connection with
medical treatment for hepatitis C virus (HCV) and seeks damages
and mandatory injunctive relief including treatment with
pegylated interferon with ribavirin.

1 Defendants B. Williams, Galloway, Milliman, Todd, D.
2 Williams, and Smith answered June 6, 2005. Defendants Wolfe and
3 Goodnight moved June 21, 2005, to dismiss. Plaintiff is
4 attempting to locate defendant Friend and serve process upon him.

5 August 9, 2005, plaintiff moved for leave to file a second
6 amended and supplemental complaint. Plaintiff's proposed
7 pleading names additional defendants Punt, Cooper, Mitchell and
8 Kanan as participants in the continued failure to provide
9 appropriate care for plaintiff's liver disease. No one has
10 opposed plaintiff's motion.

11 Leave to amend shall be freely given; whether to permit
12 supplemental pleading is within this court's discretion. Fed. R.
13 Civ. P. 15. Claims in the new pleading are closely related to
14 those in prior pleading, and permitting plaintiff to pursue them
15 in this action will promote efficiency and judicial economy and
16 prejudice no one.

17 October 13, 2005, plaintiff moved to compel a answers to
18 interrogatories seeking information about the whereabouts of
19 defendant Friend. Defendants opposed the motion on the grounds
20 they do not have this information, obtaining it would violate
21 Friend's privacy, and the discovery rules do not require them to
22 conduct an investigation on plaintiff's behalf.

23 Where the information sought is not readily available to
24 defendants and there is nothing to suggest they intend to use
25 Friend to support their defenses, defendants' arguments are well
26 taken. But see Fed. R. Civ. P. 26 (requiring disclosure of

1 addresses and telephone numbers of intended witnesses). However,
2 if defendants have, or know where information for serving Friend
3 may be obtained, they must give plaintiff that information.

4 Accordingly, the court hereby orders that:

5 1. Plaintiff's August 9, 2005, motion for leave to file a
6 second amended and supplemental pleading is granted. The Clerk
7 of the Court shall file plaintiff's proposed second amended and
8 supplemental complaint.

9 2. Defendants B. Williams, Galloway, Milliman, Todd, D.
10 Williams, Smith, Wolfe and Goodnight shall respond to the second
11 amended and supplemental complaint within 30 days. The motion to
12 dismiss by Wolfe and Goodnight is denied without prejudice as
13 relating to a superseded pleading. They may renew arguments
14 therein when responding to the new pleading.

15 3. Service is appropriate for defendants Punt, Cooper,
16 Mitchell and Kanan.

17 4. The Clerk of the Court shall send plaintiff four USM-285
18 forms, one summons, an instruction sheet and one copy of the
19 second amended and supplemental complaint.

20 5. Within 30 days from service of this order, plaintiff
21 shall complete the attached Notice of Submission of Documents and
22 submit it to the court with the completed summons and USM-285
23 forms and five copies of the second amended and supplemental
24 complaint.

25 6. Upon receipt of the necessary materials, the court will
26 direct the United States Marshal to serve defendants Punt,

1 Cooper, Mitchell and Kanan pursuant to Federal Rule of Civil
2 Procedure 4 without payment of costs.

3 7. Plaintiff's October 13, 2005, motion to compel is
4 granted in part. Defendants shall provide whatever information
5 they have, or readily can obtain, for serving Friend within 10
6 days. Time to provide information to serve defendant Friend is
7 extended to March 30, 2006. By that date, plaintiff shall submit
8 a USM-285 form and copy of the second amended and supplemental
9 complaint for service on defendant Friend. To obtain Friend's
10 address, plaintiff might consider serving subpoenas on Mule Creek
11 State Prison or the Department of Corrections, see Fed. R. Civ.
12 P. 45, or contacting the state medical licensing board.

13 Dated: January 24, 2006.

14 /s/ Peter A. Nowinski
15 PETER A. NOWINSKI
16 Magistrate Judge
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Notice of Submission of Documents

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Plaintiff hereby submits the following documents in
compliance with the court's order filed _____:

_____ completed summons form

_____ completed forms USM-285

_____ copies of the _____
Second Amended and Supplemental Complaint

Dated: _____

Plaintiff